

## **INITIAL STATEMENT OF REASONS**

(General Requirements – Marine Facility, Small Marine Fueling Facility, Tank Vessel, and Vessels Carrying Oil As Secondary Cargo)

May 9, 2006

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Chapter 1248, Statutes of 1990) (Act), created a comprehensive state oil spill program for marine waters. Among its many provisions, the Act authorized the Administrator to require the development of oil spill contingency plans for tank vessels, nontank vessels, and marine facilities. These plans are to be used to prepare for the response effort that would be necessary in the event of a discharge of oil into the marine waters of the State. The Act authorizes the Administrator to require that all necessary prevention measures are taken, and that sufficient response capability is available to handle a reasonable worst case spill. Additionally, the Administrator is required to establish regulations and guidelines that provide for the best achievable protection of the coastal and marine resources, and ensure that all areas of the coast are at all times protected by prevention, response, containment and clean-up equipment and operations.

Following the enactment of the above-cited legislation, and the establishment of the Office of Spill Prevention and Response (OSPR), regulations governing oil spill contingency plans were adopted to ensure that the affected public had clear and timely information regarding the development and submittal of these plans. These regulations were necessary to implement, interpret and make specific Government Code Sections 8670.28 through 8670.31, and 8670.36.

The proposed amendments to the regulations are needed to advise owners and operators of tank vessels, nontank vessels and marine facilities of the Administrator's continuing responsibility to attain best achievable protection of California's coastal resources and marine waters. To this end, objective standards have been developed for the protection of sensitive sites along California's coast. Other changes have been proposed to clarify/update current requirements and to remove obsolete provisions.

The specific purpose for each adoption contained in these proposed regulations is set forth below:

### **815.03 PURPOSE AND SCOPE**

This section has been amended to include reference to the new Shoreline Protection Tables (SP Tables, incorporated by reference). These new SP Tables specify the equipment, boats and staff that the plan holder will have to have under contract (or other approved means) to meet their shoreline protection requirements for the California coast, for the areas the tank vessel transits. Reference to determinations of planning volumes are being removed as those volumes were primarily used to determine shoreline protection impacts. Reference has been made to "emergency services" and an "emergency services provider", which is the new terminology to replace "salvage". Salvage is a term of art in the maritime community, and as such encompassed much more than the emergency response that is under the Administrator jurisdiction. Reference to the "Area Contingency Plans" has been moved for consolidation. Note: The authority and reference citations have been updated throughout this subchapter to reflect the new

provisions of AB 715 (Chapter 748, Statutes of 2001) and reorganization of the Act that was also brought about by that bill.

This subchapter has been amended throughout to add “tank” to vessel, to distinguish between a tank vessel which carries oil as cargo (oil tanker, etc.), and a nontank vessel which carries oil as fuel (bulk carrier, etc.).

#### Section 815.05 DEFINITIONS

Each of the terms defined in this section is used within the body of the regulations and could be assigned more than one meaning by persons affected by these provisions. The amendments to this section will assure that those persons have a clear understanding of the terms as they are used in these regulations

Subsection (b)(1)(A) has been amended to remove reference to contracts with nonprofit maritime associations because the enabling statutory language has been removed in SB 1742 (Chapter 796, Statutes of 2004).

Subsection (b)(3) has been amended for necessity to allow advance notice to an OSRO during transfer operations. During a spill OSPR wants to be assured that an OSRO can mobilize and be ready to respond with the resources required at the two-hour level (as described in the regulations). But OSPR realizes that transfer operations are scheduled events and will allow advance notice to the OSRO for spill response coverage. Language has also been added that all other contractual provisions must be followed or the contract will be nullified.

Subsection (g) has been added to define “innocent passage”. This is necessary to inform the regulated community what is considered innocent passage by a tank vessel, which is exempt from the contingency planning requirements of this subchapter.

[Old] Subsection (g) has been removed as obsolete. This term is no longer used in this subchapter.

[New] Subsection (h) has been amended to limit the use of the “Letter of Approval” to contingency plan approvals, and not for OSRO Ratings. OSRO Ratings are now issued using an OSRO Rating Letter. Using the “Letter of Approval” for two different purposes caused confusion.

[New] Subsection (i) has been amended so that the definition of “Marine Waters” no longer only applies to this subchapter. SB 1742 (Chapter 796, Statutes of 2004) amended Government Code Section 8670.3(i), the statutory definition of “Marine Waters” so that the definition now applies to the entire Chapter 7.4 (Title 2, Division 1).

#### Section 815.07 GENERAL REQUIREMENTS

Subsection (a) removes an obsolete date, and is a grammatical/technical change without regulatory effect.

Subsection (c) has been repealed as redundant. There is already an extensive notification requirement for spills that occur during transfer operations, as found in California Code of Regulations Section 843.8(s).

The rest of the section contains several grammatical/technical changes without regulatory effect.

#### Section 816.01 PLAN SUBMITTAL

Subsection (a)(1)(B)(5) has been amended to clarify that sensitive sites include economic and cultural sensitive sites, as well as economic.

Subsection (a)(3)(B) has been repealed as unnecessary. Regional plans have not been utilized and allowance for them here is not necessary or needed.

Subsection (b)(1) has been amended to remove an obsolete time frame.

[New] Subsection (b)(1) has been amended to clarify the timeframe for submittal of contingency plans for new marine facilities or marine facilities that have had a change in ownership. This will allow OSPR the time needed to conduct a thorough and complete review of the plan prior to the beginning of operations.

[New] Subsection (b)(2) has been amended to clarify the timeframe for submittal of contingency plans for tank vessels. This will allow OSPR the time needed to conduct a thorough and complete review of the plan prior to the beginning of operations.

Subsections (c)(1) – (3) have been amended to allow electronic submittal of contingency plans. Also (c)(1) has the updated name of the reviewing unit at OSPR, which is a grammatical/technical change without regulatory effect.

Subsection (c)(5) has been repealed because information about hard copy and electronic submittal is now found in Section 816.02.

#### Section 816.02 PLAN FORMAT

Language has been added to give in-depth information on electronic submittal of contingency plans. With the technologies that are now readily available, OSPR now accepts electronic version of the contingency plan, with the caveats as listed.

Subsection (b)(5) has been added to explain OSPR's retention policy for electronic and hard copy submissions.

Subsection (e) has been repealed as unnecessary – posting of notification information is already required in Section 816.04(a)(6).

#### SECTION 816.03 PLAN REVIEW AND APPROVAL

Subsection (d)(2) has been repealed as redundant as it repeats the content of (d)(1).

Subsection (e) has been amended to delineate the process and information to qualify for an Interim Approval. This is necessary to provide the Administrator with the flexibility to conditionally approve a plan that only needs minor modifications, as long as the requisite elements, as listed, are included and satisfactory. The process for “conditional approval” has been repealed as being redundant.

Subsections (f) (2)(A)-(D) has been amended to add more detail to the due process for revocation or denial of a plan. These amendments are necessary to ensure that only plan holders with adequate plans are allowed to operate in California’s marine waters.

Without these changes, plan holders could extend and delay obtaining compliance with plan deficiencies almost indefinitely, with only the consequence that it “may” be a violation.

Subsection (h)(2) has been amended to no longer require that the Letter of Approval be kept in the front of the response manual. This gives the tank vessel the option of keeping this document elsewhere, as long as it is readily accessible.

#### SECTION 816.04 PLAN IMPLEMENTATION AND USE

Subsection (a)(6)(A) has been repealed as it was unnecessary and redundant to Section 816.02(e).

Subsection (c)(1) has been amended to update the names of the State and Federal contingency plans.

#### Section 816.05 PLAN UPDATES

Subsection (a)(1)(A) has been amended so that the due date for plan resubmission will now be staggered, instead of all being due at the same time. This should help with workload planning for the reviewing unit within OSRP. Also, subsection (1) clarifies that new plans need to be submitted if there are changes to the original plan, or any updates to the plan, that have been made since the last submittal.

Subsection (a)(1)(B) has been amended for clarity to give more detailed information about when the Administrator may require earlier or more frequent resubmission of a contingency plan. This will allow the Administrator the flexibility in requiring resubmission of an approved plan if serious deficiencies, as described, are found.

Subsection (a)(2) has been amended to add more specificity about what is considered a “significant change” in a contingency plan. Certainly, change in ownership or financial responsibility coverage would warrant notifying the Administrator as soon as possible, so that the change can be reviewed to ensure the plan still provides for the best achievable protection of the coastal and marine resources.

#### DOCUMENTS RELIED UPON

Technical, theoretical or empirical studies or reports relied upon:  
None.

**BUSINESS IMPACT**

OSPR has made an initial determination that the proposed amendments may have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

**SPECIFIC TECHNOLOGIES OR EQUIPMENT**

The proposed amendments do not mandate the use of specific technologies or equipment.

**CONSIDERATION OF ALTERNATIVES**

No alternative which was considered by the OSPR would be more effective than or equally as effective as and less burdensome to affected private persons than the proposed amended regulations

**COMPLIANCE WITH GOVERNMENT CODE SECTIONS 11346.2(b)(6), 11346.5, and 11349(f)**

The regulations do not conflict with Federal statutes or regulations.